

ADDITIONAL FEE:

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R E M A R K S

The Office Action issued December 13, 2004 has been received and its contents have been carefully considered.

Applicant has amended claims 19-27, 29, 30, 33 and 34 to more "particularly point out and distinctly claim" the invention as required by 35 USC §112. All of these amendments are in the interest of clarity; they are not intended to change the scope of these claims in any way.

Applicant has also added new claims 35-49 to recite a specific "material which reacts with gasses in the respective compartment which it covers". In reciting each material, applicant has been careful to track the language on pages 4-6 of the specification which describes a number of specific materials and substances that may be used in preferred embodiments and implementations of the present invention.

The applicant wishes to thank the Examiner in charge of this application, Mr. Robert Madsen, for the courtesy and

cooperation he extended applicant's undersigned counsel during the personal interview kindly granted on January 31, 2005. At this interview, the Examiner explained why, in his view, it would be obvious to combine the teaching of Gorlich et al. and Krebs to provide a tray-type package for food products having multiple compartments, with at least one compartment sealed by a gas permeable membrane and at least one other compartment sealed by a gas impermeable membrane which includes "a material [such as an oxygen scavenger] which reacts with gasses in the respective compartment which it covers" (independent claims 19 and 23).

The Examiner acknowledges that Gorlich et al. fail to teach a "material which reacts with gasses" but refers to the following language in their patent specification as "motivation" of a person skilled in the art to combine the teaching of Krebs with the teaching of Gorlich et al.:

"For example, the membrane 30 may be substantially impermeable while the membrane 32 is substantially permeable or vice versa. One of the compartments 22 and 24 may contain a normal atmospheric gaseous environment, while the other, sealed by a substantially impermeable membrane, may contain a modified atmosphere environment. One useful modified atmosphere environment is one which is relatively low in oxygen content, compared to normal atmosphere. The reduced oxygen content extends the shelf life of a variety of products

including red meat, chicken and other products."
(Gorlich et al., Column 3, lines 1-11).

"Among the applications for the packages using the trays 20 and 34 are the provision of salad products in a packaged format. Lettuce may be contained in the outer compartment 22 while meat or salad dressing may be contained in the compartment 24, shown in FIGS. 1 to 6. In these cases, the membrane 30 may be a substantially impermeable membrane while the membrane 32 may be substantially permeable. This allows the lettuce to breath and stay fresh while the meat product or the salad dressing may be contained in an atmosphere low in oxygen content to extend its shelf life."
(Gorlich et al., Column 3, line 57-Column 4, line 5).

At the interview, the Examiner noted that Krebs discloses providing an "oxygen scavenger film strip" in a food packaging environment to package "an oxygen-sensitive article" such as a "meat product" (Column 2, line 64).

In the Examiner's words, the teaching of Gorlich et al. of a multi-compartment tray wherein lettuce is covered with an air permeable membrane, allowing the lettuce to breathe and stay fresh, and a "meat product or the salad dressing" covered with a substantially impermeable membrane, "bridges the gap" between this teaching and the teaching of Krebs. Accordingly, the Examiner believes that the rejection of applicant's independent claims 19 and 23 under 35 USC §103, based on these two references, is proper.

The applicant respectfully disagrees.

First of all, the art of packaging food for sale at a supermarket or elsewhere is an extremely crowded art, filled with numerous patents covering all sorts of incremental, though important, advances in the art. Indeed, the food packaging art has been explored and re-explored, and has been the subject of innovation, since the beginning of recorded history. Consequently, even small advances in this art pass muster for patentability under the "unobviousness" standard set by 35 USC §103.

Second, it is important to bear in mind that while Gorlich et al. and Krebs are both fairly recent patents (circa 1999), the concept of packaging food in a tray with multiple compartments; the concept of packaging certain types of food, such as salad or fruit, with an air permeable cover which allows the food to breathe; the concept of packaging other types of food, such as a meat product, in a sealed compartment; and even the concept of packaging certain types of food in low oxygen atmosphere by providing an oxygen scavenger in a sealed compartment, have been known for an extremely long time.

For example, a search of patent abstracts in the U.S. PTO database which refer to "oxygen" and either "scavenge" or "scavenger", yielded no less than 217 hits. Just as an example, attached herewith are the title pages of three patents dating back to 1980, which, like Krebs, disclose the use of an oxygen scavenger in a food packaging environment.

Thus, all of the elements recited in applicant's claims 19 and 23 were separately and individually well known for many years, at the time applicant's invention was made. However, notwithstanding what the Examiner contends was a motivation to combine these elements, no one took this final, inventive step prior to the effective filing date of this patent application.

The rational for the present invention is set forth by the applicant on page 4, second paragraph:

"By utilizing a differentiated film structure according to the present invention in which the closure of each compartment can be coordinated with the type of food present in the compartment and the condition of the food, an optimal environment can be created for the food. In this way even in a package where no separate gas atmospheres are present in the compartments good circumstances can nonetheless be obtained for the food."

In its decision in Graham v. John Deere Co., 383 US 1 (1966), the Supreme Court set forth a number of criteria for determining unobviousness under the Patent Statute. Among these "indicia of obviousness or unobviousness", the Court listed "long felt but unsolved needs" as evidence of unobviousness. This so-called "history of the art" test is still the law of the land.

Accordingly, applicant respectfully submits that applicant's independent claims 19 and 23, which combine a number of elements that have long been known and available to persons skilled in the food packaging art but have never been combined before, define an invention which is patentable over Gorlich et al. and Krebs, taken independently or in combination.

An allowance of this application is accordingly respectfully solicited.

Respectfully submitted,

By


Karl F. Milde, Jr.

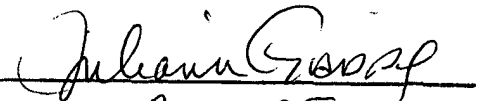
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MILDE & HOFFBERG, LLP
10 Bank Street - Ste. 460
White Plains, NY 10606
(914) 949-3100

By

Date


2-17-05